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C O N F I D E N T I A L SECTION 01 OF 03 SARAJEVO 001703

SIPDIS  
NOFORN

EUR (JONES), EUR/SCE (HYLAND, FOOKS, STINCHCOMB), INL  
(MARNEY); NSC FOR HELGERSON; OSD FOR BEIN; DEPARTMENT OF  
JUSTICE (ALEXANDRE)

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TAGS: [PGOV](#) [PREL](#) [PINR](#) [PHUM](#) [KDEM](#) [KCRM](#) [KJUS](#) [BK](#)  
SUBJECT: BOSNIA - DODIK FAILS TO DELIVER DOCUMENTS TO STATE  
PROSECUTOR'S OFFICE DESPITE PRIVATE AND PUBLIC COMMITMENTS

REF: A) SARAJEVO 1626 B) SARAJEVO 1596 C) SARAJEVO  
1548 D) SARAJEVO 1519

Classified By: AMBASSADOR CHARLES ENGLISH FOR REASONS 1.4 (B) AND (D)

11. (C/NF) SUMMARY: Despite public and private promises, including an October 23 commitment to the Ambassador, Republika Srpska PM Milorad Dodik and his government have yet to comply with a request for RS government documents from the State Prosecutor's Office. The State Prosecutor had reiterated that request in letters to four RS government bodies the week of October 20, asking that those bodies comply unconditionally and completely within eight days. A letter to a fifth RS government body was sent on October 27. In the meantime, RS Justice Minister and Dodik ally Dzerard Selman, informed the State Prosecutor's Office on October 29 that all future correspondence on the issue should go to him. The RS government also announced that it had hired U.S.-based law Dewey and LeBoeuf to represent it on matters related to the Dayton Peace Accords and the State Prosecutor's request. It is unclear whether Dewey and LeBoeuf are legally entitled to practice law in Bosnia. At best, the U.S.-based law firm's role in this process is unorthodox. The firm has told the State Prosecutor's Office that it has some of the documents it is seeking, though this cannot be verified. Regardless, the State Prosecutor's Office maintains (correctly) that the RS Government has a legal obligation to turn the documents over to it (not to a U.S. law firm). The State Prosecutor's Office continues to do all it can to avoid a potential confrontation with the RS over the matter. Nonetheless, the State Prosecutor's Office remains skeptical that Dodik and the RS intend to comply and is considering its next legal steps in the case, including a request for a seizure order, which could be made by November 17. It has also approached EUFOR informally for possible support in case SIPA has to execute a search warrant. These latest developments suggest that confrontation between RS authorities and SIPA could come to a head in early December.  
END SUMMARY

Prosecutor's Office Still Waiting on RS Documents  
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12. (C) In a private exchange with the Ambassador on October 23, RS PM Dodik promised that his government would provide the State Prosecutor's Office with documents it had requested in connection with an ongoing inquiry into alleged corruption associated with RS government contracts. Dodik told the Ambassador that his government would likely need one week to gather the documents requested by the State Prosecutor's

Office. Dodik made a similar private commitment on the same day to HighRep Lajcak, and the RS government issued a public statement on October 24 "deeming that the necessary conditions have been met" and that it would turn over the requested documents. On October 31, contacts at the State Prosecutor's Office told us that the RS government had not yet provided the requested documents.

#### RS Justice Minister Asserts Role as Clearinghouse

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¶3. (C) However, the State Prosecutor's Office had received a letter, dated October 29, from RS Minister of Justice Dzerard Selman (a Dodik loyalist) informing it that, as a result of an October 23 RS government decision, the State Prosecutor's Office must forward all future correspondence about its requests to the Ministry. As part of its inquiry, the State Prosecutor's Office sent letters on October 20 to four RS government bodies -- the RS Tax Administration, the RS Ministry of Communications, the RS Ministry of Finance, and the RS Ministry of Urbanism, Civil Engineering and Ecology -- asking for specific documents. (Note: We had initially been told that the State Prosecutor's Office was seeking information from three RS government bodies -- Ref A. End Note) The letters asked the RS government bodies to provide the requested documentation within eight days. The State Prosecutor's Office's sent an additional letter to the RS Government Administration on October 27 requesting specific documents, which also sought compliance within eight days.

#### RS Retains U.S. Law Firm to Represent It

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¶4. (C) RS PM Dodik sent separate letters to the HighRep and PIC Ambassadors on October 29 informing them that the RS had retained the services of the New York-based legal firm Dewey and LeBoeuf to represent it "in legal matters, including the Dayton Peace Agreement and activities of the High Representative." This correspondence did not refer to the State Prosecutor's request for RS government documentation. However, in a yet another letter to the HighRep, Dewey and LeBoeuf indicated its interest in discussing with him "the documentation requested of the Government of Republika Srpska by the Prosecutor's Office and other issues related to the Dayton Accords." HighRep Lajcak had instructed PIC Embassies to decline requests for information from the firm, but, against the advice of his OHR's Legal Department, he agreed to have "a courtesy meeting" on October 31 between OHR staff and the firm's representatives.

#### Dewey and LeBoeuf May Have the Documents

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¶5. (C) In his October 29 letter, Justice Minister Selman informed the State Prosecutor's Office that the RS government had asked Dewey and LeBoeuf to deal with the request for RS government documentation. The State Prosecutor's Office told us that Dewey and LeBoeuf also contacted the Office directly by phone on October 30 to request a meeting. Acting Chief Prosecutor Milorad Barasin instructed staff not to meet with the firm's representatives. (Note: Under Bosnian law the RS Government is required to cooperate with the State Prosecutor's Office, and the issue of cooperation is not subject to litigation or negotiation. In addition, there is no formal legal proceeding against the RS Government that would require it to retain counsel -- foreign or domestic. Finally, it is unclear whether Dewey and LeBoeuf are legally entitled to practice law in Bosnia. End Note) On November 1, the international investigator charged with leading the pre-investigation into RS corruption also received a letter dated October 31 from Dewey & LeBoeuf indicating that the RS Government had provided the firm with the documents requested by the State Prosecutor in its October 20 letters.

## The Latest Timetable

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¶16. (C/NF) The State Prosecutor's Office told us on October 31 (and again on November 3) that it remained skeptical Dodik would honor his public and private commitments to cooperate fully and unconditionally with it. Our contacts have interpreted the RS decision to retain a U.S.-based law firm as evidence that the RS is planning, at a minimum, to stall, rather than comply as requested in the State Prosecutor's correspondence. The State Prosecutor's Office repeated to us that it would do all it could to avoid a physical confrontation with the RS government over its request, but that, nonetheless, it would prepare for the worst case scenario. With this in mind, it has queried EUFOR about the possibility of providing protection to SIPA officers if they were required to execute a search warrant of RS government buildings. In light of the latest developments, particularly the RS Government's continued failure to comply, the State Prosecutor's Office is contemplating further legal action this week.

¶17. (C/NF) In that case, the legal process, and a potential confrontation with the RS, could play out as follows.

-- November 7: The RS Tax Administration, the RS Ministry of Communications, the RS Ministry of Finance, the RS Ministry of Urbanism, Civil Engineering and Ecology, and the RS Government Administration are expected to comply with the requests for information from the State Prosecutor's Office by this date. (Note: This is slightly longer than the eight day period for compliance provided for in the October 20 letters, though not the October 27 letter to the RS Government Administration. End Note)

-- November 10: The State Prosecutor's Office submits a request to the State Court for a temporary order to seize the

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documents.

-- November 11/12: The State Court approves/rejects the temporary seizure order (We assume it will approve the request). The State Prosecutor's Office and SIPA will have fifteen days in which to execute the order.

-- November 12/13: SIPA investigators execute the seizure order. As previously reported (Ref B), SIPA plans to send only two or three SIPA inspectors to deliver the seizure order to RS officials. At this point, it is possible RS authorities will claim that they have turned the requested documents over the Dewey and LeBoeuf; in this case, as we understand Bosnian law, Dewey and LeBoeuf would be required to turn them over (assuming they are originals or certified true copies) to the State Prosecutor's Office. This should not be matter, as we understand it, for negotiation.

-- November 27: If the RS authorities have only cooperated partially or not cooperated at all, the State Prosecutor's Office will ask the State Court for a search warrant.

-- November 28/December 1: The State Court approves the search warrant.

-- December 2/3: SIPA inspectors, and if needed, a SIPA SWAT team, execute the search warrant.

Comment

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¶18. (C/NF) Dodik's decision to engage a U.S.-based law firm on the requests from the State Prosecutor's Office and to turn documentation over to the firm rather than Bosnian government officials -- as he is required (and promised) to do -- complicates the politics of the confrontation. No doubt this

is exactly what he intended. Dodik will now likely claim that he complied with the State Prosecutor's Office requests by turning over the documents to Dewey and LeBoeuf. This does not meet his legal responsibilities to cooperate fully and unconditionally with state-level law enforcement and judicial authorities, however. The State Prosecutor's Office is wary about engaging Dewey and LeBoeuf directly given the firm's uncertain legal standing in Bosnia and because the issue of RS cooperation is not one that should be negotiated.

The State Prosecutor's Office is considering next steps, but its inclination is to take the logical next step in the legal process -- requesting a temporary seizure order.

ENGLISH